



September 5, 2018

Representative Diana Farrington
N-794 House Office Building
Lansing, MI 48933

Subject: Senate Bill 465

REDICO Management, Inc. is a national commercial real estate developer and property manager headquartered in Southfield, MI and has serviced the community for 50 years. REDICO represents owners, investors and stakeholders in various Office, Retail, Mixed Use, Residential and Senior Living for American House Senior Living. The Company has an excellent reputation in the marketplace, has developed several hundred high profile projects and employs approximately 250 people.

SB 465 has major ramifications for the real estate industry. The bill unfairly and improperly amends the Construction Lien Act to separately recognize a Design Professional Lien that attaches to real estate **regardless of any actual physical improvement to the property and regardless of whether the improvement ever actually occurs:**

A DESIGN PROFESSIONAL MAY FILE A NOTICE UNDER SUBSECTION AT ANY TIME AFTER THE WRITTEN CONTRACT IS EXECUTED REGARDLESS OF WHETHER THE PROFESSIONAL SERVICES UNDER THE WRITTEN CONTRACT HAVE BEEN COMMENCED OR COMPLETED, AND REGARDLESS OF WHETHER THE ERECTION, ALTERATION, REPAIR, OR REMOVAL OF THE STRUCTURE OR THE OTHER IMPROVEMENT TO WHICH THE PROFESSIONAL SERVICES RELATE HAS BEEN, OR IS EVER, COMMENCED OR COMPLETED. HOWEVER, A DESIGN PROFESSIONAL SHALL NOT FILE A NOTICE LATER THAN 90 DAYS AFTER THE DESIGN PROFESSIONAL, OR ANOTHER PERSON ACTING BY, THROUGH, OR UNDER THE DESIGN PROFESSIONAL, LAST PERFORMED PROFESSIONAL SERVICES.

Please understand our goal is to work together with our trusted advisors and professionals that are required in every planned property development that at times take years and significant investment. Many of these projects as you can imagine never result for one reason or another in a commercial development. We have maintained excellent long term relationships with architects and design professionals and are a key component to any development, especially in the early stages. We maintain these relationships by working together and our intent around informed opposition to SB465 is not to avoid payment but not to allow lien rights attaching to a property that may never experience any improvements and therefore encumbered unnecessarily by a lien. REDICO, like many real estate investors, will perform some design due diligence on potential acquisitions for real estate that is not yet owned, but may be under contract. This provision would allow the design professional to record a "Notice of Design Contract" against property not yet owned by the other party to the design contract. This could create an untenable cloud on the title outside of the control of the true owner, creating hardship and delays in any real improvements to properties.

Further, this bill provides for a two-tiered approach to priority by giving the architect a priority over lenders that even predates the first Actual Physical Improvement to the property. By giving the designer this priority, lenders, in our experience will be reluctant to finance a project when an architect is already engaged and has recorded a Notice of Design Contract.

Designers are already protected by the Construction Lien Act, but their lien does not attach until after the first Actual Physical Improvement, which is consistent with the intent and purpose of the Construction Lien Act to protect the owner from paying twice and to protect the contractors/designers from not getting paid for the labor and materials creating an improvement to real property. If the project never occurs, there is no improvement to real property, thus there can be no lien rights. Allowing lien rights in the absence of an improvement is a substantial expansion of lien rights in favor of one party.

REDICO feels SB465 does not provide any real benefit to the economy, could hamper likelihood of potential developments, will impede generating jobs, and will increase cost to private and public building owners. This proposed expansion of lien rights will likely hinder an already competitive market that encourages development and investment. We strongly encourage you to reexamine the impact this bill will have on private and public entities and retain the existing laws in place which have served all parties well over the years.

Thank you for this opportunity to respond and we look forward to any comments and answering any questions you may have.

Sincerely,

Samantha Eckhout
Senior Vice President of Development



Senate Bill 465

BOMA members represent every aspect of our industry from building owners, building managers, real estate developers, and various suppliers including landscapers, roofers, janitorial services, utilities, construction firms and architects. We are primarily comprised of business owners who have made the choice to invest in Michigan. In southeast Michigan, the office market contributes 3 billion dollars in operational expenses to the economy and supports 27,000 jobs.

SB 465 has major ramifications for the real estate industry. The bill amends the Construction Lien Act to separately recognize a Design Professional Lien that attaches to real estate regardless of any actual physical improvement to the property - and regardless of whether the improvement ever actually occurs:

A DESIGN PROFESSIONAL MAY FILE A NOTICE UNDER SUBSECTION AT ANY TIME AFTER THE WRITTEN CONTRACT IS EXECUTED REGARDLESS OF WHETHER THE PROFESSIONAL SERVICES UNDER THE WRITTEN CONTRACT HAVE BEEN COMMENCED OR COMPLETED, AND REGARDLESS OF WHETHER THE ERECTION, ALTERATION, REPAIR, OR REMOVAL OF THE STRUCTURE OR THE OTHER IMPROVEMENT TO WHICH THE PROFESSIONAL SERVICES RELATE HAS BEEN, OR IS EVER, COMMENCED OR COMPLETED. HOWEVER, A DESIGN PROFESSIONAL SHALL NOT FILE A NOTICE LATER THAN 90 DAYS AFTER THE DESIGN PROFESSIONAL, OR ANOTHER PERSON ACTING BY, THROUGH, OR UNDER THE DESIGN PROFESSIONAL, LAST PERFORMED PROFESSIONAL SERVICES.

While not meaning to "stiff" design professionals, some real estate investors will perform some design due diligence on potential acquisitions for real estate that is not yet owned, but may be under contract. This provision would allow the design professional to record a "Notice of Design Contract" against property not yet owned by the other party to the design contract. This could create an untenable cloud on the title outside of the control of the true owner.

Designers are already protected by the Construction Lien Act, but their lien does not attach until after the first Actual Physical Improvement, which is consistent with the intent and purpose of the Construction Lien Act to protect the owner from paying twice and to protect the contractors/designers from not getting paid for the labor and materials creating an improvement to real property. If the project never occurs, there is no improvement to real property, thus there can be no lien rights. Allowing lien rights in the absence of an improvement is a substantial expansion of lien rights in favor of one party.

SB465 does not provide any benefit to the economy, will not generate any jobs, and will increase cost to private and public building owners. Additional burdens will hinder a competitive market that encourages development and investment. We urge you to consider the impact this bill will have on private and public entities and deny its passage.

Again, thank you for this opportunity and we look forward to answering any questions you may have.

For more information on BOMA, its members or issue positions please contact:

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Actual Physical Improvement

-Physical change

-Readily visible

-Alert upon reasonable inspection MCL

570.1103(1)

Includes "grubbing" ET
McKenzie v. Long
Investment

-POSTED AT SITE

-RECORDED

-BEFORE API

NOC

Y

N

NOF

SUBCONTRACTOR/
SUPPLIER

Y

N

*ACTUAL NOTICE MAY BE SUFFICIENT
Vogelstein v. Orde Mill Pond

- PERSONAL SERVICE

- CERTIFIED MAIL

- WITHIN 20 DAYS OF FIRST FURNISHING

570.1109

1) Lien Rights of Potential Lien Protected

2) Owner on Notice Claimant

3) RESIDENTIAL notice of SS

- Payment requested
- Upon demand 570.1110

570.1109 (6) May lose value of lien for materials/labor supplied before NOF if payments were made pursuant to:

1) EXTENDS TIME FOR NOF TO 20/30 DAYS AFTER FURNISHING 570.1108 (10), (11)

1) SS

Y

N

Remaining protection is Building Contract Fund Act 570.152. Contractor who retains or uses proceeds of payment for any purpose other than to first pay laborers, subcontractors, and materialmen shall be guilty of a felony.

NOTARIZED DISCLOSE SUBCONTRACTORS/ SUPPLIERS
SUBSTANTIAL COMPLIANCE WITH STATUTORY FORM
ALLOWS WITHHOLDING AND DIRECT PAYMENT TO SUBS/SUPPLIERS
a) Disclosed on SS
b) providing an NOF 570.1110 (6)
EVEN IF SS IS FALSE
Horton v. Verneille
False SS = Felony 570.1110 (10)
RESIDENTIAL OWNER NOTIFIES NOF SUB OF THE SS. 570.1110(6)

CL

REQUIREMENTS

- W/ 90 days of last date of work 570.1111 (1)

- sum of liens should not exceed contract value 570.1107 (6)

- accompanied by proof of service of NOF

- certified mail

ACTIONS

- written demand by owner for written statement of account. 570.1113

- Bond off

a) 2x Lien amount

b) cash/surety 570.1116

Must be foreclosed within 1 year of recording and accompanied by

a) Proof of service of claim of lien

b) SS

c) Notice Lis Pendens 570.1117

-Liens have equal priority. 570.1119

-If not timely, discharge. 570.1128

RELIEF

-K amount including extras, less payments. 570.1107

-Cost of obtaining legal description. 570.1108

-*Additional damages.* 570.1120

-Attorney fees. 570.1118

2) LW

Y

N

TYPES

FULL UNCONDITIONAL

- required upon payment in full 570.1115(2)

PARTIAL UNCONDITIONAL

- required upon partial payment 570.1115 (3)

FULL CONDITIONAL

- effective upon payment 570.1115 (4)

PARTIAL CONDITIONAL

- effective upon payment 570.1115(5)

RESIDENTIAL OWNER MUST VERIFY IN PERSON, IN WRITING OR BY PHONE. 570.1115(7)

Character

- No waiver in advance of work 570.1115 (1)

- Forged waivers provide no protection
Horton v Verneille

Kitch ©

BCFA 570.151